



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32453875

Date: AUG. 8, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a speculative designer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied seven of these criteria, but the Director determined the Petitioner fulfilled only the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that he meets four additional categories of evidence.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, the Petitioner must demonstrate his prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

The Petitioner initially presented a certificate stating that he “received a Student Runner Up honor in the Speculative Design category in the 2020 [redacted] Awards program for the project [redacted] [redacted].” He also provided information from the [redacted] website indicating that he joined the [redacted] as a “Design Researcher in Residence” in 2019.³ In addition, the Petitioner submitted a “[redacted] Young Researcher’s Award” certificate stating that he “made an excellent presentation at the [redacted] Symposium 2008.”⁴ The Director’s

¹ In his appeal brief, the Petitioner does not contest the Director’s findings that he did not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), and therefore he has not overcome the Director’s determination on these issues. We consider the Petitioner’s prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

² *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

³ The information from the [redacted] states: “The Designer in Residence is a competitive program in which an emerging international talent in design is invited to spend a period of time at the [redacted]. There they work jointly with [redacted] students and staff to develop new signature pieces in response to the context of [redacted] and to the research expertise of the [redacted]. The resulting work is then exhibited at [redacted]. . . .”

⁴ The record indicates that the Petitioner was one of three recipients of this award in 2009 and that other categories included “Best Paper Award,” “Research Society Award,” and “Special Award.” Regarding the “Young Researcher’s Award,” information from the [redacted] states that it is “presented to persons who have shown excellent content at

decision explained that the Petitioner did not submit evidence showing that “these awards are recognized nationally or internationally” in his field. The Petitioner does not contest Director’s conclusion relating to these awards on appeal and therefore he has not overcome the determination that they do not meet requirements of this criterion. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

The Petitioner argues on appeal that he is the recipient of a 2008 [redacted] which he maintains meets the requirements of this criterion.⁵ He presented information from the [redacted] website indicating that he and two others received a [redacted] in the “Innovation” category for their [redacted]. According to the “Results of the [redacted] 2008,” 1,067 items of 3,023 total screened items received [redacted] in 2008, including “39 items” in the Innovation category.⁶ The [redacted] website also discussed “special” awards with a higher level of distinction than the Petitioner’s honor.⁷ For example, this information states:

The special awards awarded include the [redacted] Award Best 15, which include the candidates for the [redacted] Grand Award, together with the [redacted] Sustainable Design Award and [redacted] Life-Scape Design Award

. . . .

The [redacted] Award Best 15 refers to the [redacted] Grand Award candidates and [redacted] Gold Award winners. When the [redacted] Grand Award recipient is decided on November 6, the remaining 14 nominees of the Best 15 will be designated [redacted] Gold Award winners.

The Petitioner also submitted articles discussing others’ receipt of a [redacted] or the [redacted] program at large in online publications such as *ZME Science*, *Design Boom*, and *Dezeen*, but this documentation does not demonstrate the significance of his specific Innovation [redacted] in the field of endeavor or indicate that his 2008 award has received media coverage or attention that rises to the level of national or international recognition. Without further evidence regarding its national or international significance in his field, the Petitioner has not demonstrated that his Innovation [redacted] is a nationally or internationally recognized prize or award for excellence in the field. Accordingly, the Petitioner has not established that he meets this regulatory criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.

the [redacted] Symposium sponsored by the Society. Winners must be under the age of 35 . . . and have not previously received this award in the past. The presentations subject to the award are made at the [redacted] Symposium held in the previous year.”

⁵ The record indicates that the [redacted] Award is operated by the [redacted]

⁶ Other 2008 [redacted] winners included 357 recipients in the “Human body and life” category, 273 recipients in the “Industry and society” category, 386 recipients in the “Mobility and networks” category, and 12 recipients in the “collaboration with Design Excellence Award” category. The [redacted] program typically bestows more than one thousand awards each year. For example, the Petitioner presented an article, entitled [redacted] which states that “[a]pproximately 37,000 [redacted] Awards have been given” over the past several decades.

⁷ The record does not indicate that the Petitioner was honored among the [redacted] “Best 15” and that he received either a “Grand Award” or “Gold Award.”

Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.⁸ The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.⁹ USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.¹⁰

Here, the Petitioner provided a 2019 article about him in *Workship*, a job and project search platform specializing in freelance and side jobs. He contends on appeal that "*Workship*, which attracts 480.4K monthly website visitors, is a major media outlet that has published an exclusive feature on [the Petitioner]." As evidence that *Workship* is a form of major media, the Petitioner submitted information from Similarweb.com indicating that the magazine's website (Goworkshop.com) had 480.4K "Total Visits Last 3 Months" with a "Global Rank" of 157,659, a "Country Rank" of 10,101, and a "Category Rank" of 40. The Petitioner, however, has not demonstrated that the total trimonthly visits to Goworkshop.com and the rankings from Similarweb.com render *Workship* a form of major media.

The Petitioner also presented a 2020 article, entitled [REDACTED] posted on Note.com, a social publishing platform. He argues on appeal that this article and Similarweb.com data relating to Note.com were "not reviewed properly" and that the platform "is a major media outlet." While the article briefly references the Petitioner's work, it is not about him. Instead, the article summarizes the author's observations relating to [REDACTED] See, e.g., *Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the Petitioner submitted information from Similarweb.com indicating that Note.com had 130.2M "Total Visits Last 3 Months" with a "Global Rank" of 389, a "Country Rank" of 33, and a "Category Rank" of 2. While the Petitioner has offered website traffic data for Note.com, the record does not indicate the number of visitors who specifically viewed [REDACTED] or the significance of the article's placement on the platform. Without further information and evidence, the Petitioner has not demonstrated that the article was in major media.

The Petitioner also submitted material from D-labkit.ac.jp, Export FM, Engadget, tweets, and a blog, but his appeal brief does not contest Director's conclusions relating to this other material. Therefore, he has not overcome the determination that it does not meet requirements of this criterion. Again, an issue not raised on appeal is waived. See, e.g., *Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

For the above reasons, the Petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

⁸ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁹ *Id.*

¹⁰ *Id.*

The Petitioner submitted evidence showing that he has authored scholarly articles in professional publications. Accordingly, we agree with the Petitioner that he meets the requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To qualify under this criterion, a petitioner must show that they performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. For a leading role, USCIS looks at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof.¹¹ A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading.¹² For a critical role, USCIS looks at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.¹³ A petitioner must also demonstrate that the organization or establishment, or the department or division for which they hold or held a leading or critical role, has a distinguished reputation.¹⁴ Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person."¹⁵

The Petitioner maintains on appeal that he has performed in a leading or critical role for [REDACTED] [REDACTED]¹⁶ The Director determined that [REDACTED] has a distinguished reputation, but concluded that the Petitioner's evidence relating to [REDACTED] [REDACTED] was insufficient to show these companies have a distinguished reputation. The Director acknowledged the Petitioner's submission of information about these three companies "from their own respective websites and articles which mention them," but noted that the record lacked evidence demonstrating they "have distinguished reputations as compared with other related entities." The Director further explained that some media attention does not necessarily demonstrate a company's eminence, distinction, or excellence.

Regarding the reputation of [REDACTED] the Petitioner contends on appeal that "major media outlets" such as *ZDNet Japan* and Crunchbase "have featured [REDACTED] thereby confirming its distinguished reputation." The 2021 article in *ZDNet Japan* (at Japan.zdnet.com/release) is a "press release provided by PR Times," a Japanese public relations company.¹⁷ The conclusion of the article states: "This press release contains information posted by the company that made the announcement." The record also includes a summary of [REDACTED] company information from Crunchbase, a

¹¹ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Petitioner claims eligibility for this criterion based on his role for these organizations rather than a division or department within these organizations.

¹⁷ This press release discusses a collaboration between [REDACTED] to "launch the [REDACTED] [REDACTED] Another article, entitled [REDACTED] appears on [REDACTED] and promotes their online training program. This information, however, does not demonstrate that [REDACTED] has a distinguished reputation.

company that provides information about businesses. The Petitioner, however, has not demonstrated that the self-promotional material in *ZDNet Japan* and the [] company profile available through Crunchbase's business search engine are sufficient to show [] has earned a distinguished reputation.

With respect to the reputation of [] the Petitioner asserts on appeal that "major media outlets" such as *ASCII* and *Nikkan* "have featured [] thereby confirming this organization's distinguished reputation." The 2019 article in *ASCII*, entitled [] is an interview of [] CEO discussing her company's novel [] recruiting support tool. Likewise, the 2019 article in *Nikkan* discusses [] launch of its "first product, [] and expectations relating to its popularity such as the company president's goal of having "1,000 people registered by the end of March." While the articles in *ASCII* and *Nikkan* describe [] and its features, they do not indicate the level of commercial success of the product or otherwise show that [] has achieved a distinguished reputation.

Regarding the reputation [] the Petitioner submitted articles from websites such as Allaboutcircuits.com, Technical.ly, Medium.com, and Technicianonline.com.¹⁸ For example, the articles in Allaboutcircuits.com and Technical.ly, entitled [] and [] discuss accelerator projects in [] New York involving [] CEO. These articles discuss [] products, but they do not indicate the economic scale of the company's customer base or that the company has otherwise garnered a distinguished reputation in the industry.

Because the documentation in the record does not establish the distinguished reputation of [] [] the Petitioner has not demonstrated that they meet the requirements of this criterion. Since this issue is dispositive, we decline to reach and hereby reserve the appellate arguments regarding whether the Petitioner has performed in a leading or critical role for each of these three companies. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner contends that he "has played a critical role for the highly distinguished [] by leading its most important projects and thereby impacting the overall organization in major ways."¹⁹ As it relates to the Petitioner's leading or critical role for [],²⁰ the record includes an October 2023 letter from T-K-, "Managing Designer, Design Innovation Group Leader" at [] stating:

Since 2019, I have been . . . leading the Design Innovation Group within the [] [] Design Center. . . . Additionally, I lead the "envisioning studio," a respected

¹⁸ The Petitioner's appeal brief does not provide arguments or point to evidence relating to [] reputation. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

¹⁹ We agree with the Director that the record shows [] has a distinguished reputation.

²⁰ The Petitioner provided information indicating that [] "is a Japanese multinational technology company based in [] with a global presence in 49 countries and nearly 40,000 employees."

research and design organization at [REDACTED] comprised of five highly skilled designers.

....

I initiated a project at the envisioning studio . . . to create a post-pandemic business strategy based on observed signs of social changes. However, we faced challenges in envisioning post-COVID scenarios and stakeholder engagement, which led us to invite [the Petitioner] to join our project. . . . I contacted [the Petitioner] directly and signed a contract between [REDACTED] and him.

[The Petitioner] joined our project from May to October 2020 and led us to co-create scenarios of a post-pandemic society and [REDACTED] role in it. He conducted ten weekly two-hour Zoom workshop sessions with designers at the envisioning studio in Japan, utilizing the online whiteboard platform Miro for collaborative discussions.... [The Petitioner] was exceptionally skilled at using post-its and illustrations to select essential information, plan critical activities within a time frame, and lead to a feasible landing point. . . . He led the entire project without any problems or delays and gave us the confidence to tackle the uncertainty and envision positive futures during the pandemic.

....

In collaboration with [the Petitioner], designers at the envisioning studio visualized nine possible socio-technical scenarios for a post-pandemic world from 2025 to 2052 and [REDACTED] future product concepts in each worldview. This unique and outstanding deliverables are now published on our envisioning studio's website . . . and [the Petitioner's] name is also credited for his critical and irreplaceable contribution to this project.

T-K-'s statements indicate that the Petitioner played a role in facilitating "collaborative discussions" at "ten weekly two-hour Zoom workshop sessions" during a six-month project within the company's six-person envisioning studio, but the Petitioner has not demonstrated that he performed in a leading or critical role for [REDACTED] and its nearly 40,000 employees. While T-K- further asserts that "[t]he project was also shared internally within the [REDACTED] Design Center, and the tools and activities that [the Petitioner] provided us with have been used in subsequent projects as valuable company assets," his letter does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's materials have significantly affected the [REDACTED] Design Center or "have been used in subsequent projects" throughout other parts of the company.²¹ Nor does T-K-'s letter offer specific examples or otherwise contain detailed and probative information to support his claims that the Petitioner's "work has made a lasting impact" and "completely transformed our organization, leading [the Petitioner] to play a critical role for [REDACTED] overall."

²¹ T-K-'s letter does not specifically identify the "subsequent projects" in which the Petitioner's materials were used.

Here, the Petitioner did not provide an organizational chart or other similar evidence to establish where his role fit within the overall hierarchy of [REDACTED] to demonstrate a leading role for the company.²² Nor does the evidence demonstrate that the Petitioner has contributed to the company in a way that was of significant importance to the outcome of its corporate mission or business operations.²³

For the aforementioned reasons, the Petitioner has not established that he meets this criterion.

III. CONCLUSION

While the Petitioner meets the authorship of scholarly articles and artistic display criteria, he has not established he satisfies the criteria relating to awards, published material, or leading or critical role. Because the Petitioner's inability to meet three of the initial criteria is dispositive of his appeal, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.²⁴

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). See also *Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R.

²² The record includes a copy of the "Outsourcing Contract Agreement" between the Petitioner and [REDACTED]. This "Outsourcing Contract Agreement" supports the Director's statement that the Petitioner performed "contract work with the company on a project but not as an employee." We therefore disagree with the Petitioner's claim on appeal that the Director's statement was "an error of fact and highly misleading."

²³ For example, the Petitioner has not shown that his specific project materials have significantly increased [REDACTED] product sales or business operations' efficiency.

²⁴ See *INS v. Bagamasbad*, 429 U.S. at 24, 25; see also *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

§ 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.